STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1128

State of Minnesota,
Respondent,

vs.

Kerri J. Pernell,
Appellant.

Filed January 15, 2008
Affirmed
Worke, Judge

Ramsey County District Court
File No. K1-05-600867

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Jerome P. Filla, Amy K.L. Schmidt, Peterson, Fram & Bergman, P.A., 55 East Fifth Street, Suite 800, St. Paul, MN 55101 (for respondent)

Charles A. Ramsay, Sharon R. Osborn, Ramsay & DeVore, P.A., 1700 West Highway 36, Suite 450, Roseville, MN 55113 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

On appeal from a conviction for refusal to submit to chemical testing, appellant argues that the refusal statute violates the constitutional right to decline to consent to a

search. Appellant also argues that her *Miranda* rights were violated when police read her the implied-consent advisory and asked her why she refused to submit to testing. We affirm.

D E C I S I O N

Fourth Amendment

Appellant Kerri J. Pernell was convicted of second-degree test refusal, in violation of Minn. Stat. §169A.20, subd. 2 (2004). Appellant brings two constitutional challenges. Appellant first argues that the test-refusal statute violates the Fourth Amendment prohibition against unreasonable searches and seizures. *See* Minn. Stat. § 169A.20, subd. 2 (providing that it is a crime for a person to refuse to submit to a chemical test for intoxication). The constitutionality of a statute is a question of law, which this court reviews de novo. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). A statute is presumed constitutional, and "will not be declared unconstitutional unless the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision." *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979).

The United States and Minnesota Constitutions provide protection against unlawful searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are presumed to be unreasonable unless an exception to the warrant requirement applies. *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991). Consent is an exception to the warrant requirement under the Fourth Amendment. *State v. Hanley*, 363 N.W.2d 735, 738 (Minn. 1985). "Any person who drives, operates, or is in physical

control of a motor vehicle . . . consents . . . to a chemical test of that person's blood, breath, or urine for the purpose of determining the presence of alcohol, a controlled substance or its metabolite, or a hazardous substance." Minn. Stat. § 169A.51, subd. 1(a) (2004). Therefore, appellant's Fourth Amendment rights were not violated because she consented to submit to a chemical test by driving a motor vehicle. Further, this court has held that Minn. Stat. § 169A.20, subd. 2, does not violate an individual's Fourth Amendment rights. *State v. Mellett*, 642 N.W.2d 779, 784-85 (Minn. App. 2002), *review denied* (Minn. July 16, 2002) (noting that the legislature has a "compelling state interest in protecting state residents from drunk drivers, and an important part of the implementation of that interest is the testing of those whom officers have probable cause to believe have been drinking and are driving while impaired").

Appellant acknowledges that *Mellett* purports to address a Fourth Amendment challenge, but argues that it summarily dismissed the Fourth Amendment issue without analysis. But the *Mellett* court noted that the appellant raised an alleged Fourth Amendment violation during oral argument. *Id.* at 785. The court rejected the challenge and decided to defer to the legislature's judgment in enacting procedures to enforce the DWI statutes, and held that the refusal statute did not violate Fourth Amendment rights. *Id.* *Mellett* is dispositive of appellant's Fourth Amendment challenge to Minn. Stat. § 169A.20, subd. 2; therefore, her argument fails.

Miranda Warning

Appellant next argues that her conviction for refusal to submit to testing should be reversed because her *Miranda* rights were violated. An appellate court reviews a district

court's findings of fact for clear error, but makes an independent review of the district court's determination regarding custody and the necessity of a *Miranda* warning. *State v. Hince*, 540 N.W.2d 820, 823 (Minn. 1995). The supreme court has held that this court is not required to decide issues when any possible error is harmless beyond a reasonable doubt. *State v. Aligah*, 434 N.W.2d 460, 460 (Minn. 1989).

Here, an officer read appellant the implied-consent advisory. The officer asked appellant if she understood what he explained; she replied with a head-shake no. The officer asked appellant if she wished to consult with an attorney; she replied with a head-shake no. The officer asked appellant if she would take a breath test; she replied with a head-shake no. The officer then asked appellant what her reason was for refusing and appellant stated: "I do not think I should have to take a test." Because appellant's statement, "I do not think I should have to take a test" is not in any way incriminatory, the district court's admission of this evidence, even if made in error, was harmless beyond a reasonable doubt. Further, appellant did not raise a reasonable-refusal defense in the district court and has not identified on appeal the grounds on which she could have raised such a defense; therefore, she has not been prejudiced by the admission of the evidence, and we decline to address the need for a *Miranda* warning before the officer's last question.

Affirmed.